



California Fair Political Practices Commission

May 27, 1986

Eric Lauterer
City Attorney
City of Garden Grove
P.O. Box 3070
Garden Grove, CA 92642

Re: Your Request for Advice
Our File No. A-86-137

Dear Mr. Lauterer:

Thank you for your letter requesting advice on behalf of Garden Grove City Councilmember Walter Donovan concerning his duties under the conflict of interest provisions of the Political Reform Act.^{1/} This advice is based on the facts provided in your letter.

FACTS

Mr. Donovan is a member of the Garden Grove City Council. The Garden Grove City Council also serves as the Garden Grove Redevelopment Agency. Mr. Donovan's current term on the City Council commenced on November 6, 1984. He also served as a member of the City Council from April 11, 1972, to April 8, 1980.

Mr. Donovan has served as a member of the Board of Directors of the Medical Center of Garden Grove since approximately July 1985. Since September 1985, he has received compensation for his services in the amount of \$200 per month. The Medical Center of Garden Grove is a California corporation, and a wholly-owned subsidiary of AMI, Inc., a Delaware corporation.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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Commencing approximately September 23, 1980, the Redevelopment Agency entered into a Property Owner's Participation/Purchase and Sale Agreement for the development of the hospital complex which is now the Medical Center of Garden Grove. According to your letter, the participation of the Redevelopment Agency in this agreement commenced after Mr. Donovan's first period of service on the City Council/Redevelopment Agency, and was completed prior to the commencement of Mr. Donovan's current term on the City Council/Redevelopment Agency.

Currently there is nothing pending with the City Council or Redevelopment Agency relevant to the Medical Center of Garden Grove. The hospital facilities have been completed and no further participation by the City Council/Redevelopment Agency is now pending. The hospital does pay the City of Garden Grove an annual local business operation tax, in the amount of \$1,146, which is established by ordinance and does not vary annually by vote of the City Council. It is within the City Council's jurisdiction to make changes in the fees for business operation tax certificates that they deem appropriate, subject to state law.

QUESTION

May Mr. Donovan simultaneously serve as a member of the Garden Grove City Council/Redevelopment Agency and as a member of the Board of Directors of the Medical Center of Garden Grove?

CONCLUSION

The Political Reform Act does not prohibit Mr. Donovan from simultaneously serving as a member of the Garden Grove City Council/Redevelopment Agency and as a member of the Board of Directors of the Medical Center of Garden Grove. However, Mr. Donovan is required to disqualify himself from participating in any governmental decision which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the Medical Center of Garden Grove. This advice is limited to the provisions of the Political Reform Act; you should also consider whether Mr. Donovan's actions are further restricted by Government Code Section 1090 or Health and Safety Code Section 33130.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence any governmental decision in which he knows or has reason to know he has a financial interest. Thus, the Political Reform Act does not prohibit public officials from having a financial interest in a decision; rather, the public official is required to disqualify himself from participating in the decision if a conflict of interest exists. Therefore, under the Political Reform Act, Mr. Donovan may simultaneously serve on the City Council/Redevelopment Agency and on the Board of Directors of the Medical Center of Garden Grove.

For purposes of Section 87100, an official has a financial interest in a decision if the decision would have a reasonably foreseeable material financial effect on the official or a member of his immediate family, or on any of the following interests:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the

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public official within 12 months prior to the time when the decision is made.

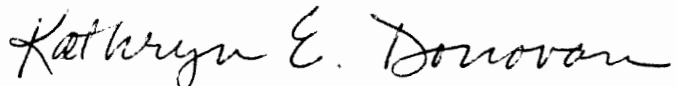
Section 87103(a)-(e)

Mr. Donovan has been a member of the Board of Directors of the Medical Center of Garden Grove since approximately July 1985. He receives compensation for his services in the amount of \$200 per month. Accordingly, because Mr. Donovan has received income of \$250 or more from the Medical Center of Garden Grove in the last 12 months, Mr. Donovan has a potentially disqualifying financial interest pursuant to Section 87103(c). In addition, if the Medical Center of Garden Grove is operated for profit, Mr. Donovan is a director of a business entity (see Section 82005), and has a potentially disqualifying financial interest pursuant to Section 87103(d). Accordingly, Mr. Donovan is required to disqualify himself from participating in any governmental decision which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the Medical Center of Garden Grove. In your letter, you reached a similar conclusion. I have enclosed copies of Commission regulations 2 Cal. Adm. Code Sections 18702, 18702.1, and 18702.2, which provide guidance in determining whether the effect of a decision on the Medical Center of Garden Grove would be considered material.

This advice is limited to the provisions of the Political Reform Act. We cannot provide advice regarding other provisions of law, such as Government Code Section 1090 or Health and Safety Code Section 33130, which restrict the actions of public officials in certain contract and redevelopment situations.

If you have any questions regarding this letter, please contact me at (916) 322-5901.

Sincerely,



Kathryn E. Donovan
Counsel
Legal Division

KED:sm
Enclosures



CITY OF GARDEN GROVE, CALIFORNIA

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OFFICE OF THE CITY ATTORNEY
(714) 638-6881

April 22, 1986

Conflict of Interest Section
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

RE: Request for Opinion - Councilman Walter Donovan

Gentlemen:

I am writing to obtain an opinion from the Fair Political Practices Commission relative to the following facts:

The City of Garden Grove is a general law city with its council consisting of five members. The mayor is elected to serve in that capacity for a two-year term and the four other members are elected for four-year terms which are staggered.

One of the members of the council is WALTER DONOVAN. He has served on the council at two different times. The first period ran from April 11, 1972 to April 8, 1980. His current term commenced on November 6, 1984. The City Council also serves as the City's Redevelopment Agency and the City and Agency were involved in the development of a hospital complex which is now known as the Medical Center of Garden Grove. The participation of the Agency as to the complex commenced approximately the 23rd of September 1980 in which a Property Owner's Participation/Purchase and Sale Agreement was entered into with the Agency and was completed before Mr. Donovan came back on the council.

Mr. Donovan since approximately July 1985, has served on the Board of Directors of the Medical Center of Garden Grove for which he has received a monthly compensation in the amount of \$200 since approximately September 1985. The Medical Center of Garden Grove is a California corporation, a wholly-owned subsidiary of AMI, Inc., a Delaware corporation. The By-laws provide that the authorized number of corporate directors shall be ten or more. The general functions of the Board of Directors as contained in their rules and regulations of the Medical Center of Garden Grove state that the Board's general functions are, in part, as follows:

4/22/86

The Board shall have the responsibility for the business and affairs of the Hospital. The Board shall delegate responsibility and authority for day-to-day management of Hospital to the Executive Director or other authorized representative. The Executive Director shall manage the Hospital under the control and direction of the Board. In addition to other functions set forth herein, the Board shall have responsibility for development of an institutional planning process, community and public relations, finance, Hospital accreditation, adequate personnel, quality patient care, and medical staff liaison. Formal standing committees shall exist to give direction in the areas of planning.

It appears from the City records that Mr. Donovan was not on the Council or Agency at the time agreements were entered into for the Agency to participate in the development of the hospital site. Presently there is nothing pending with the City or Agency relevant to the Medical Center of Garden Grove as the hospital facilities have been built and completed and no further participation by the Agency or City is now pending.

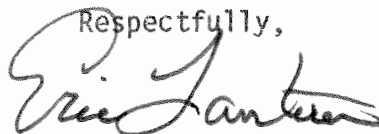
Presently the hospital pays the City of Garden Grove an annual local business operation tax in the amount of \$1,146 which is also established by ordinance and does not vary annually by vote of the council though it is within the City Council's jurisdiction to make changes in the fees for a business operation tax certificates that they deem appropriate, subject to state law.

It would appear from the above that Mr. Donovan, should the City Council or Agency have a request from the Medical Center of Garden Grove, to accomplish something that was in the discretion of the Council by state law or local ordinances, would be in a position of having to disclose his relationship with the hospital and under appropriate circumstances thereafter, abstain from participating in the voting procedure.

The question posed by this memorandum is to determine whether or not the relationship with Mr. Donovan as an elected member of the City Council and as a member of the City's Redevelopment Agency is restricted at this time as noted herein, from serving on the Board of Directors of the Medical Center while continuing to participate as a member of the City Council and the Agency.

Should you require additional documentation relevant to the request contained herein, I would welcome the opportunity to forward it to you.

Respectfully,

A handwritten signature in dark ink, appearing to read "Eric Lauterer", written in a cursive style.

ERIC LAUTERER
City Attorney

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California Fair Political Practices Commission

April 28, 1986

Eric Lauterer
City Attorney
P.O. Box 3070
Garden Grove, CA 92642

Re: 86-137

Dear Mr. Lauterer:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

Kathryn E. Donovan
Counsel
Legal Division

KED:plh